

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	CRIMINAL NO.: 04-10336-NMG
v.	)	
	)	
JULIO SANTIAGO, et al.	)	

**UNITED STATES' PROPOSED FORFEITURE  
JURY INSTRUCTIONS AND SPECIAL VERDICT FORM**

The United States of America, by and through its undersigned counsel, submits the attached proposed jury instructions and special verdict form for use during the forfeiture phase of this criminal proceeding.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ Nancy Rue  
WILLIAM F. BLOOMER  
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Assistant U.S. Attorneys  
U. S. Attorney's Office  
John Joseph Moakley  
United States Courthouse  
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**CERTIFICATE OF SERVICE**

I, Nancy Rue, Assistant U.S. Attorney, hereby certify that the foregoing document was filed through the Electronic Court Filing system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Nancy Rue  
Nancy Rue  
Assistant U.S. Attorney

Dated: October 10, 2006

**UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 1**  
**(Jury's Duty Regarding Forfeiture)**

Ladies and Gentlemen of the Jury, in view of your verdict that the defendant(s) are guilty of the charges in Counts \_\_\_\_ of the Indictment, you have one more task to perform before you are discharged. I must now ask you to render a special verdict concerning property the government alleges is subject to forfeiture.

Under federal law, any person who is convicted of a drug violation shall forfeit to the United States any property constituting or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation.

Proceeds of drug trafficking include any monies or other property that a defendant obtained, directly or indirectly, as the result of his or her drug trafficking violations. Proceeds includes the total amount of gross proceeds obtained by a defendant as the result of his or her drug trafficking and is not reduced by any amounts the defendant paid for the drugs he or she later sold or for any other costs or expenses incurred.

You must now consider what verdict to render on the question whether there is a nexus, that is a connection, between property that the government alleges shall be forfeited to the United States in each drug violation count of which you have already found the defendant[s] guilty.

In your consideration of the forfeiture claims of the Second Superseding Indictment, you are instructed that your previous

finding that the defendant(s) are/is guilty of having committed the offenses charged in Counts \_\_\_\_\_ is final, conclusive, and binding. I direct you not to discuss in your forfeiture deliberations whether the defendant(s) are/is guilty or not guilty of any of the violations.

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Fed.R.Crim.P. 32.2(b)(4) .

**UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 2**  
**(Burden of Proof)**

All of my previous instructions regarding direct and circumstantial evidence, credibility of witnesses, your duty to deliberate, and the necessity of a unanimous verdict, apply during your supplemental deliberations concerning the special verdict on the forfeiture claims.

However, my previous instructions on the government's burden of proof regarding your verdicts on the guilt of the defendant[s] do not apply to your deliberations and verdicts regarding forfeiture. In deliberating and deciding your verdicts regarding forfeiture, I instruct you that the government need only prove by a preponderance of the evidence that the property is the proceeds of the drug violation. The government is not required to prove this beyond a reasonable doubt.

I instruct you that, in order for the government to establish by a preponderance of the evidence that property constitutes proceeds of the drug violation, it must prove that it is more likely than not that this is so. In other words, "preponderance of the evidence" means that the government's evidence, when considered and compared with that opposed to it, has more convincing force and produces in your minds belief that the property constitutes proceeds of the drug violation. Your

job is to determine whether it is more likely than not that the property is such property.

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*Libretti v. United States*, 116 S.Ct. 356, 363 (1995); *United States v. Keene*, 341 F.3d 78, 85-86 (1st Cir. 2003) (preponderance standard applies to criminal forfeiture).

**UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 3**

**(Evidence to be Considered)**

While deliberating, you may consider any evidence, including testimony, offered by the parties at any time during this trial.

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*United States v. Derman*, 211 F.3d 175, 184 (1st Cir. 2000);  
*United States v. Sandini*, 816 F.2d 869, 873-74 (3d Cir. 1987);  
*United States v. Bornfield*, 145 F.3d 1123, 1134 (10th Cir. 1998).

**UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 4**  
**(Money Judgment)**

Under federal law, any person who is convicted of a drug violation is required to forfeit to the United States any proceeds of the violation, whether or not that property has been or can be seized by the government. The government is not required to prove that the monies obtained by a defendant as a result of the drug violation are still in the defendant's possession. Rather, the government is only required to prove that a defendant obtained proceeds and that those proceeds were derived from his drug violations, even if no specific assets are identified into which those proceeds are traced.

Thus, the government is entitled to a personal money judgment against a defendant for an amount equal to the value of the proceeds. In a drug violation for which the government requests a money judgment, it is your duty to determine the value of the proceeds regarding that violation.

Where two or more persons act jointly in committing a violation of the drug laws, then they are jointly and severally liable for the forfeiture of all proceeds of that drug violation. If a defendant violates the drug laws in concert with others, then he is jointly and severally liable for the full amount of the proceeds, regardless of who actually took possession of the cash. I instruct you that in considering your forfeiture verdict, you may not consider the degree to which a particular defendant was involved in the offense because, by law and as the



special verdict form provides, each defendant is liable for the entire amount of the money judgment.

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*United States v. Hall*, 434 F.3d 42, 59 (1st Cir. 2006) (money judgment); *United States v. Candelaria-Silva*, 166 F.3d 19, 44 (1st Cir. 1999), cert. denied, 120 S.Ct. 1559 (2000) (joint and several liability).



**UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 5**  
**(Unanimous Verdict)**

You must reach a unanimous verdict as to each question on each special verdict form. Everyone must agree to any "YES" or "NO" answer or any amount you enter on a special verdict form. Everyone must agree whether the preponderance of the evidence proves that such property constitutes the proceeds of the drug trafficking violation of which the defendant was convicted.

**UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 6**  
**(Special Verdict Form)**

A special verdict form has been prepared for you. The special verdict form lists the property which the government asserts is proceeds.

You may answer by simply putting an "X" or check mark in the space provided next to the words "YES" or "NO". If you answer "NO", there is a follow-up question you must answer. The foreperson must then sign and date the special verdict form.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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  )  
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**SPECIAL VERDICT**

We, the jury, return the following special verdict:

Has the government established, by a preponderance of the evidence, that the defendant[s] obtained, directly or indirectly, \$\_\_\_\_\_ in proceeds as the result of the drug crimes charged in Count(s) \_\_\_\_\_ of the Indictment ?

YES     \_\_\_\_\_  
NO     \_\_\_\_\_

If you answer "NO" above, then what was the value of the proceeds that the defendant[s] did obtain, directly or indirectly, from the offense? \$\_\_\_\_\_